

STATE OF VERMONT



REQUEST FOR PROPOSALS for an INDEPENDENT AUDIT of Reported Savings and Cost-Effectiveness of Programs Delivered by Vermont Energy Efficiency Utilities

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REQUEST FOR PROPOSALS

FOR AN
INDEPENDENT AUDIT

OF

Reported Savings and Cost-Effectiveness of Programs
Delivered by Vermont Energy Efficiency Utilities

RFP RELEASED ON: 11/17/21

QUESTIONS DUE: **December 6, 2021 – 4:30 P.M. (EST)**

PROPOSAL DUE DATE: December 17, 2021 by 4:30 PM

This RFP is issued by:

The State of Vermont
Public Utility Commission

Proposals must be delivered, via email to:

Karen Hutchinson
Business Manager
Vermont Public Utility Commission
Karen.hutchinson@vermont.gov

Background

The Vermont Public Utility Commission (“Commission” or “PUC”) is soliciting bids for an independent audit to begin immediately upon execution of a contract pursuant to this request for proposal (“RFP”). Pursuant to 30 V.S.A. § 209(f)(12) (“Section 209(f)(12)”), the Commission is required to conduct an independent audit of the reported savings and cost-effectiveness of programs delivered by the Vermont Energy Efficiency Utilities (“EEUs”).¹

The EEUs deliver electric, natural gas, and thermal-energy-and-process-fuel (“TEPF”) energy efficiency services to residential and business customers in the State of Vermont. The EEUs include Efficiency Vermont, the City of Burlington Electric Department (“BED”),² and Vermont Gas Systems, Inc. (“VGS”).³ Efficiency Vermont provides energy efficiency services to all portions of the state except for BED’s service territory; BED and VGS provide energy efficiency services in their respective service territories. The Department of Public Service (“Department”) conducts independent evaluations of EEU programs, including annually verifying the savings claimed by Efficiency Vermont, BED, and VGS. More information regarding the EEUs can be found on the Commission’s website at <http://puc.vermont.gov/energy-efficiency-utility-program>. The prior Independent Audit can be found at <http://puc.vermont.gov/energy-efficiency-utility-program/eeu-verification-and-evaluation>.

Requirements for the Independent Audit

The primary responsibility of the Independent Auditor will be to verify the savings achieved by the EEUs in the years 2017, 2018, 2019, and 2020, and to verify the cost-effectiveness of EEU programs as provided in Section 209(f)(12) and as further described below.

The Department has analyzed the EEUs’ savings claims for 2017 through 2019 through a process referred to as the “savings claims verification process,” which is separate and distinct from the independent audit required by Section 209(f)(12). The 2020 savings claims for Efficiency Vermont and VGS will be verified by the Department in July/August 2021 and will be made available to the Independent Auditor via ePUC, the Commission’s electronic case management system.

¹ Section 209(f)(12) states that the Commission shall, “Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the Commission to deliver energy efficiency programs under subdivision (d)(2) of this section.”

² Vermont Energy Investment Corporation (“VEIC”) serves as the statewide EEU known as Efficiency Vermont under an order of appointment issued by the Commission on 2/12/16 in Docket No. 8455. BED was issued an order of appointment by the Commission on 4/19/11 in Docket No. 7466. The Commission’s orders of appointment for VEIC and BED were most recently amended in Case No. 18-2867-INV on November 26, 2019.

³ Vermont Gas Systems, Inc. (“VGS”) serves as an EEU under an order of appointment issued by the Commission on April 17, 2015, in Docket No. 7676 and amended on June 13, 2016, in Docket No. 8694. The Commission’s order of appointment for VGS was most recently amended in Case No. 18-2867-INV on November 26, 2019.

The Independent Auditor will review the procedures and methods used by the Department in this “savings claims verification process” and provide an assessment of each of the EEUs’ energy and capacity savings for the period January 1, 2017, through December 31, 2019, as well as for 2020. The Independent Auditor shall provide advice for improving the current processes, including recommended alternative process and the pros and cons of the different approaches. At a minimum, the Independent Auditor will perform an independent review of:

- The cost-effectiveness of each of the EEUs’ programs, including Efficiency Vermont’s, BED’s, and VGS’s;
- The reported energy and capacity savings achieved by Efficiency Vermont, BED, and VGS;
- The Technical Reference Manual (which is a basis for the EEUs’ savings claims) and the process for managing and updating it;
- The database and other information compiled by each EEU that are used to develop and track savings claims and project costs;
- The procedures and methods used in the Department’s savings claims verification process; and
- Any other relevant information, including information developed through the Department’s programmatic evaluation, when appropriate.

The Independent Auditor will also report on the cost-effectiveness of each of the EEUs’ programs in three categories: (1) residential programs, (2) commercial and industrial programs, and (3) all programs combined. The Independent Auditor will use at least three methods to assess the programs’ cost-effectiveness, including:

- a) The “utility test,” which will include all of Efficiency Vermont’s, BED’s, and VGS’s operating costs (including all administrative and information technology costs), the costs of EEU incentives, the costs of the Department’s monitoring and evaluation activities, and the costs of the EEU Fund Fiscal Agent;
- b) The “total resource cost test,” which will include all the cost categories covered under the utility test plus participant costs, third-party costs, and other resource benefits; and
- c) The “Vermont societal test,” which will include all the cost categories covered under the total resource cost test plus a risk adjustment and environmental adjustment, consistent with Vermont practice.

For each of the tests, actual costs for the years 2017, 2018, 2019, and 2020 will be used where available and appropriate. The Independent Auditor will work with Commission staff to determine the amount of costs to be used for items for which actual figures are either not available or not appropriate because they are linked to the end of the three-year performance period (such as Efficiency Vermont’s performance incentives and the Department’s evaluation costs)⁴. A pro rata share methodology will be developed for this category of costs.

⁴ The performance period is 2018 through 2020.

In addition, bidders should propose any additional measurements or information to be included in the Independent Audit that would be helpful in determining the overall cost-effectiveness of the EEUs' programs.

Additional Requirements

The Independent Auditor will provide the Commission with a Report to the Legislature and a Management Letter. The Report to the Legislature will summarize the Independent Auditor's conclusions regarding (1) the verified energy and capacity savings from the EEUs' programs in 2017, 2018, 2019, and 2020; and (2) the cost-effectiveness of Efficiency Vermont's, BED's, and VGS's residential programs, commercial and industrial programs, and all programs combined.

The Report to the Legislature will include a brief description of:

- The process followed by the Independent Auditor to conduct the independent audit;
- The dates and tools used to perform the audit; and
- The entities or persons who had significant involvement in the review.

In addition, the Report will include the Independent Auditor's assessment of whether the Department's savings claim verification activities undertaken for 2017, 2018, 2019, and 2020 are likely to reflect material and/or systematic errors in data entry or accuracy by the Department, Efficiency Vermont, BED, or VGS. The Report will also include the Independent Auditor's assessment of whether the results of the cost-effectiveness analysis are robust. The primary audience for this Report will be state legislators who may not be familiar with technical energy efficiency evaluation terminology; as a result, the use of such terminology should be minimized to the extent possible or, where not possible, clearly defined.

The Management Letter will accompany the Independent Audit and will include the Independent Auditor's assessment of the strengths, weaknesses, and recommendations for improvement of any of the elements that were components of the review, such as Efficiency Vermont's, BED's, and VGS's databases and the Department's savings claim verification methodology. The Management Letter will also include the Independent Auditor's assessment of, and any recommendations for, the Technical Advisory Group process utilized to develop efficiency measure characterizations. The primary audience for the Management Letter will be the Commission, the Department, Efficiency Vermont, BED, and VGS; the use of technical terminology is appropriate for this audience. The Independent Auditor will provide the Commission with the final Management Letter when it submits the Independent Audit.

The Independent Auditor may be called upon by the Commission to respond to legislative inquiries about the report.

Information Management

The Independent Auditor must agree to provide the Commission with electronic copies of its reports and work papers upon request.

Some of the information that may be used by the Independent Auditor may be customer-specific or could provide an unfair competitive advantage if disclosed to an entity delivering electricity, natural gas, or thermal-energy-and-process-fuel services outside of the energy efficiency services and initiatives approved by the Commission for EEU implementation. The Independent Auditor will safeguard this information using systems that provide appropriate protection in the collection, processing, storage, and retrieval of such information.

The Independent Auditor and any support personnel with access to confidential information will sign a non-disclosure agreement provided by the Commission relative to protection of confidential information. The Independent Auditor will take reasonable steps to ensure the physical security of confidential information maintained by the Independent Auditor.

In the event that the Independent Auditor receives a request to disclose confidential information from a person or organization other than the Commission, the Department, or their authorized employees, the Independent Auditor shall deny the request and inform the requester that such requests for the information may be filed at the Commission. The Commission will then determine whether the information should be disclosed.

The Independent Auditor's opinions and decisions regarding the performance of the EEUs, the savings verification process undertaken by the Department, and determinations of cost-effectiveness will not be binding on the Commission, as the Commission must make its own independent assessment.

Any and all information collected under this contract shall be made available to the Commission and its authorized employees and contractors upon request of the Commission or its staff.

Communications

A robust review of Efficiency Vermont's, BED's, and VGS's savings claims, as well as the Department's evaluation of those savings claims, will require the Independent Auditor to have access to the files and personnel of Efficiency Vermont, BED, VGS, and the Department. The Independent Auditor shall communicate with these entities to ensure that it gains a comprehensive understanding of each of the EEU's program implementation practices as well as the accounting practices for the program costs and administrative costs. The Independent Auditor shall ensure that it has the most up-to-date information from the EEUs and the Department including most recent logos and other related materials.

Although the Independent Auditor will make information requests of and will conduct interviews with representatives of the EEUs and the Department, to preserve the independence of the auditor's work, the Independent Auditor will not be permitted to respond to any direct requests or recommendations from these entities. Should any conflicts arise in this regard, the Independent Auditor will bring the dispute to the attention of the Commission.

The EEUs and the Department will have an opportunity to review the draft audit documents through the Commission. The Independent Auditor shall consider and incorporate feedback as appropriate via direction from the Commission. The Independent Auditor is expected to incorporate this step into its schedule.

Conflicts of Interest

The Independent Auditor will not be permitted to engage in business activities that create a conflict of interest or appearance thereof with the performance of the audit. Accordingly, the Independent Auditor, its applicable employees, and its applicable subcontractor(s) will be required to promptly and fully inform the Commission of any business activities and/or relationships that a reasonable person, fully acquainted with the facts and circumstances, could reasonably conclude might unfairly disadvantage another party. The Independent Auditor, its applicable employees, and its applicable subcontractor(s) will be expected to abide by the Commission's reasonable determination as to whether such activities or relationships fall within the terms of this Paragraph.

The Independent Auditor will be required to affirm that neither it, nor any of its applicable personnel or subcontractor(s), has or presently expects to have any beneficial, contractual, or business relationship with the Department, BED, VEIC, or VGS that could be directly affected by the Independent Auditor's performance of the audit. The Independent Auditor must further affirm that it and its applicable personnel and subcontractor(s) shall not develop, pursue, or engage in any such beneficial, contractual, or business relationships with the Department, BED, VEIC, or VGS throughout the term of any contract with the Commission pursuant to this RFP, and for 6 months thereafter, without the written permission of the Commission. During the term of the contract, the Independent Auditor, its employees, and its subcontractor(s) may not advocate before the Commission on behalf of any party on any substantive matter related to the EEUs.

The Independent Auditor will be expected to require its subcontractor(s) to disclose to the Independent Auditor, on an on-going basis throughout the terms of their contracts with the Independent Auditor, any contracts they intend to enter into with any Vermont transmission or distribution utilities. The Independent Auditor will be required to promptly provide a copy of all such disclosures to the Commission.

RFP Responses

All responses to this RFP must specify: (1) the personnel who would work on the audit, and the qualifications of those personnel; (2) the hourly rate of all personnel involved in the preparation

of the report; and (3) a maximum dollar amount that the Independent Auditor would charge for the audit.

The responses must also include a proposed Schedule for completing the audit using January 1, 2022, as the start date and a six-month period of performance. The schedule should incorporate suggested milestone deliverables and dates that will allow the Commission to monitor the Independent Auditor's performance to ensure that the Independent Audit is progressing appropriately.

Responses will be evaluated by the Commission based on the following criteria:

- 40%: Responsiveness of the bid to the requirements of the RFP; including a demonstrated comprehensive understanding of Vermont's EEU programs and presentation of innovative approaches to achieving the objectives of the Independent Audit as well as a proposed Schedule that incorporates appropriate milestones upon which to monitor the Independent Auditor's performance;
- 25%: The related experience and past performance of the auditor;
- 20%: The qualifications of the personnel and staff; and
- 15%: The overall cost of the auditor's services (the Commission's budget for this work is not-to-exceed \$150,000).

CONTRACT TERMS: The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. Upon completion of the evaluation process, the State may select one or more Vendors with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event State is not successful in negotiating a contract with a selected Vendor, the State reserves the option of negotiating with another Vendor, or to end the proposal process entirely.

If a Bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

Questions Regarding the RFP

Any questions regarding the RFP and its requirements shall be submitted to Karen Hutchinson, Business Manager, via email (Karen.Hutchinson@vermont.gov) no later than December 6, 2021. Questions or comments not raised in writing on or before the last day of the question period are

thereafter waived. Answers to all questions will be posted on the Commission's website by December 10, 2021.

Deadlines for Reponses

Responses to this RFP shall be submitted to Karen Hutchinson, Business Manager, via email (Karen.Hutchinson@vermont.gov) no later than December 17, 2021. No other manner of bid delivery will be accepted. Emailed bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails and/or multiple attachments will not be accepted. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary in order to meet this size limitation.

Responses received shall be public records, available for public inspection, after a final contract for these services has been executed.

SINGLE POINT OF CONTACT: All communications concerning this RFP are to be addressed in writing to the State Contact listed on this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.

STATEMENT OF RIGHTS: The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP. The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

Best and Final Offer (BAFO). At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

COST OF PREPARATION: Bidder shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request and/or any proposals made.

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereinafter called “State”), and _____, with a principal place of business in _____, (hereinafter called “Contractor”). Contractor’s form of business organization is _____. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$_____.00.

4. **Contract Term.** The period of Contractor’s performance shall begin on _____, 20__ and end on _____, 20__.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of ___ pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)

Attachment D - Other Provisions

Additional attachments may be lettered as necessary

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D
- (3) Attachment C (Standard State Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B

List other attachments, if any, in order of precedence

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

By the Contractor:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT A – STATEMENT OF WORK

The Contractor shall: _____

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: _____
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: _____

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

- B.** Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A.** is not under any obligation to pay child support; or
- B.** is under such an obligation and is in good standing with respect to that obligation; or
- C.** has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and

intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D – OTHER PROVISIONS

- 1. Confidentiality of State Information.** The State retains full right and title to data provided by the State and any data derived therefrom, including metadata (collectively, the “State Data”). Contractor acknowledges that certain State Data to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will not collect, access, or use State Data except as necessary to provide services to the State under this agreement; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not rent, sell, publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State’s information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor’s possession to only those employees on its staff who must have the information on a “need to know” basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract. Contractor agrees to execute additional non-disclosure or related agreements with the State as required or requested by the State for Contractor to be given access to certain State Data.
- 2. Professional Liability Insurance.** In addition to any the insurance requirement in Attachment C of this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this Contract, with minimum coverage of \$500,000 per claim